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OUTGOING LTR NO.

EG&G ROCKY FLATS

JOE ORDER#

94 RF 08328

EG&G ROCKY FLATS, INC.

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CORRES. CONTROL

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August 8, 1994

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ROCKY FLATS CLEANUP AGREEMENT (RFCA) NEGOTIATIONS AUGUST 4, 1994 -
TPO-030-94

RFCA negotiations were held at the Environmental Protection Agency (EPA) Conference Center, on August 4, 1994. Attachment 1 is the meeting minutes, Attachment 2 is the Agenda, and Attachment 3 is the Cleanup Work Plan Working Group Meeting Minutes. The following attachments were handed out at the meeting: Attachment 4, Revised Budget Planning and Execution Language, August 4, 1994; Attachment 5, EPA's Proposal re Stipulated Penalties, August 4, 1994; and Attachment 6, Draft Part 11, Stipulated Penalties and Credits.

If you have any questions, please contact me on extension 8577 or Pete Judd on digital page 5627.

Timothy P. O'Rourke

Timothy P. O'Rourke
Environmental Restoration Project Division

ejw

Attachments:
As Stated

CLASSIFICATION:

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CONFIDENTIAL
SECRET

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DATE

REPLY TO RFP CC NO:

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7 CLOSED

APPROVALS:

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The Administrative Record Staff

ROCKY FLATS CLEANUP AGREEMENT (RFCA)
MEETING MINUTES
August 4, 1994

1. Opening

The meeting was opened at 0830 by the Keystone Facilitators and the agenda was reviewed. The agenda is included as Attachment 2.

2. Discussion of RCRA, CERCLA, and FPCA.

Lou Johnson (EPA) advised that the carve out of RCRA and CERCLA is not acceptable to their management. Peter Ornstein stated that "as far as EPA is concerned there is no carve out." It is not a legal issue but a policy issue. Since EPA has responsibilities under CERCLA for Rocky Flats which is on the National Priority List they do not intend to pull back from their involvement and give up any of their responsibilities.

Jo Sowinski (CDPHE) says that CDPHE can live with an integrated approach provided some changes are made to minimize problems that have been encountered.

EPA stated that all building closures come under CERCLA. Dan Miller (CDPHE) stated that if they are RCRA closures with mixed wastes they remain under RCRA and do not come under CERCLA.

Martin Hestmark (EPA) stated that at an earlier meeting, the CDPHE and EPA agreed to come up with proposals to improve the interface between the two agencies and to provide procedures for handling building closures. Furthermore Hestmark intends that the requirements and procedures to be followed whether RCRA, CERCLA or a hybrid will be defined in the Cleanup Work Plan (CWP). It is anticipated that CERCLA requirements will be applied to the RCRA closure process.

At the next meeting EPA and CDPHE will present a proposal that defines how they will provide one set of integrated agency comments on documents submitted by DOE for review. A proposal to resolve disputes between the two agencies will also be proposed.

EPA and CDPHE will take at least two weeks to come up with the detailed technical approach for integrating RCRA/CERCLA for building closures.

DOE/EG&G will commence drafting language for the RFCA to reflect an integrated approach which emphasizes the responsibilities of the Lead Regulatory Agency including the elimination of any Joint Agency designations for OUs. This activity will be require input from EPA and CDPHE as stated in the previous two paragraphs.

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3. Report from CWP Work Group

Rich Schassberger (DOE) reported on the activities of the Working Group. The minutes of the August 3, 1994 CWP meeting is included as Attachment 3 and provide detail two areas that were the subject of extended discussion meeting.

The necessary and sufficient requirements issue was discussed in length. Frazer Lockhart (DOE) advised that a bottoms up approach to review requirements is necessary due to the differences in work required in each OU. A top down approach will not be possible due to the OU differences which preclude making changes to the application of many requirements. As a result, Lockhart noted that in some cases work that is currently being done under the Agreement but is a precursor to CERCLA work is not covered by NEPA where DOE/EG&G currently consider that the CERCLA requirements are equivalent to the NEPA requirements for that work that is currently in the Agreement.

Martin Hestmark (EPA) elaborated on his concerns with the contingency is determined for cost estimates. This is addressed by Frazer Lockhart who explained that in some cases the exclusive use of historical data to develop estimates proposed by Hestmark, could result in higher costs since efficiencies of improved processes or new approaches were not recognized. By comparing the estimates based on historical data with estimates based on industrial standards a reality check was made which identifies those items that appear out-of-line with industry costs. These items can then be further evaluated to determine if costs can be lowered.

All parties agreed that the goal was to have reasonable contingencies applied.

Tim Howell (DOE-legal) cautioned the regulators that the information that was being revealed by DOE/EG&G was confidential in many instances to be confidential information from a cost standpoint and that such information was not to be revealed to third parties.

4. Review of Funding Language

The proposed funding language distributed the previous week has been revised by the Budget Work Group and the new changes have been distributed and explained. A copy of the revised language is included as Attachment 4 to the minutes.

Lou Johnson stated that EPA removed Option B from the table and dealt with identifying a flat dollar budget amount for the Hanford site. EPA believes the Hanford language is acceptable provided the following features are included:

- a) Outyear planning/enforceable milestones are set
- b) Language on requesting necessary funding is included

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three parties. These include the commitments made in Sections 2, 4, and 5 of this document.

August 22 - Based on reaching agreements on RFCA wording during the August 11 meeting DOE will issue Rev. 4 to the RFCA for internal DOE-RFFO review. On August 25, 1994 DOE-RFFO will send copies of Rev.4 to DOE-HQ and the regulators (assuming HQ agrees-Brockman to make the request) for review and comment.

August 31 - Rev. 4 will be discussed at the RFCA Negotiation Meeting.

8. Status of the Cleanup Work Plan

July 28 - Draft copies of the CWP except for Appendices B-H were issued to DOE for internal review. Copies also sent to HQ.

August 3 - Copies of chapters 1-3 were issued to the regulators for their review.

August 11 - DOE will advise on the completion of the Appendices for the CWP

August 17 - DOE will submit Chapters 4 and 5 of the CWP and any completed Appendices or a detailed outline of what will be in the uncompleted appendices.

9. Calendar for Future Meetings

CWP meetings - August 10, 17, 25, 30

RFCA negotiations - August 11, 18, 26, 31.

The schedule for September is not firmed up at this time but is expected to be more intensive.

**ROCKY FLATS CLEANUP AGREEMENT (RFCA)
MEETING ATTENDEES
August 4, 1994**

ENVIRONMENTAL PROTECTION AGENCY

Lou Johnson
Martin Hestmark
Peter Ornstein
Cliff Villa

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Gary Baughman
Joan S. Sowinski
Dan Miller
Joe Schieffelin

DEPARTMENT OF ENERGY

Dave Brockman
Rick DiSalvo
Ray Greenberg
Tim Howell
Rich Schassberger
Ann Taylor - Booze, Allen, Hamilton
Frazer Lockhart - Part time

EG&G ROCKY FLATS, INC.

Tim O'Rourke
David Ward
Peter Judd - HNUS

KEYSTONE CENTER

Tim Mealey
Sarah Stokes
Todd Barker



Tuesday, August 2, 1994 5:27:38 PM

Common Room Item



From: Todd Barker
Subject: August 4 Agenda
To: Common Room

The next RFCA negotiation session is August 4 from 8:30 A.M. to 3:30 P.M. at the EPA Conference Center. The agenda is:

8:30 Discussion about the relationship between RCRA, CERCLA and FFCA -- we will discuss this even if the State does not have a written proposal.

10:30 Break

10:45 RCRA, CERCLA and FFCA discussion continued

11:45 Lunch

1:00 Report from the CWP Workgroup

1:15 Report from Budget Workgroup -- discussion if necessary

2:00 If available, discuss CDPHE proposal on Submission and Review of Documents (Part 16, Rev. 3)

3:00 Next Steps

3:30 Adjourn

As a reminder, the Budget workgroup has a conference call August 3 from 8:00 A.M. to 9:00 A.M. (MDT). The call in number is 301-903-7081. Please feel free to post us a message or call if you have any questions. Thanks.

CLEANUP WORK PLAN

WORKING GROUP MEETING MINUTES

Date of Meeting: August 3, 1994

Location: EPA Conference Center

Persons Attending: Keystone: Todd Barker, Sarah Stokes
CDH: J. Schieffelin, Carl Spreng
EPA: M. Hestmark, W. Fraser
DOE-RFFO: R. Schassberger
EG&G: T.J. O'Rourke, D. Ericson
HNUS: P. Judd

1. Agenda Review

The meeting was opened by Todd Barker and the Agenda was reviewed. A copy of the agenda is included as Attachment 1.

The following paragraphs delineate the significant items discussed in the meeting:

2. Cost Estimating Practices for ER Activities

A presentation was made by Dave Ericson on how costs are estimated for ER activities. The following four(4) documents were passed out:

a) Copies of slides "Developing Cost Estimates for ERPD Rocky Flats Plant". Included as Attachment 2.

b) Pages 2-19 through 2-28 from the "Environmental Restoration Management Cost Estimating Handbook" Document No. RFP/ERM-94-00009 Rev. 1 covers Section 2.2.3 Risk Management.

c) Figure 2-2 CERCLA/SARA, RCRA and D&D Terminology- Estimates Needed During the Phases of an ER Project (also from the "Environmental Restoration Management Cost Estimating Handbook" Document No. RFP/ERM-94-00009 Rev. 1). Included as Attachment 3.

d) Work Package Number: 13101 FY95 SCOPE SUMMARY/ASSUMPTIONS.

The key concern raised during the presentation by both regulators was how the cost contingencies were calculated. Both regulators believe there is significant experience in performing the ER work that the experience factor should result in little or no contingency for a lot of the activities. The push of course is that with less money designated for contingency funds more will be available to perform other priority ER work. Hestmark wants a baseline that pushes the contractor to perform. He feels that a T&M contractor does not have enough incentive to get work done within cost estimates. He is expecting the new contracting approach by DOE to replace the O&M contractor will improve the

Developing Cost Estimates for ERPD Rocky Flats Plant

Presented by
D. R. Ericson

August 3, 1994

August, 1994 cd



DEVELOPING COST ESTIMATES

- What is Being Estimated and Why?
 - Identify Purpose
 - Identify Scope, Ground Rules and Assumptions
- Conducting the Estimate
 - Identify Specific Activities that Make Up the Scope
 - Identify Resources Required for Activities
 - Identify Data Sources and Acquire Data
- Estimate Adjustment Factors
 - Apply/Verify Documented Indirect Factors
 - Apply Escalation Indices
 - Risk Analysis and Contingency Development

August, 1994 cd



DEVELOPING COST ESTIMATES

CON'T

- Estimate Documentation
 - Backup Documentation
 - Basis of Estimate
 - Estimate Report Format
- Review and Submittal
 - Independent Review Process
 - Management Review Process
 - Submit as Final
- Audits
 - Audit(s) of Estimate

August, 1994 ed



WHAT IS BEING ESTIMATED AND WHY?

Estimates Needed During an ER Project

- Assessment Phase
 - Planning Estimates
 - Preliminary Estimates
 - Detailed Estimates
- Remediation Phase
 - Planning Estimates
 - Feasibility Estimates
 - Preliminary Estimates
 - Detailed Estimates

August, 1994 ed



CONDUCTING THE ESTIMATE

- * Identify Specific Activities that Make up the Scope
 - Activity-Based Costing
 - Activity Dictionary
 - Code of Accounts (COA)
- * Identify Resources Required for Activities
- * Identify Data Sources and Acquire Data

August, 1994 ed



CONDUCTING THE ESTIMATE

CON'T

- * Identify and Apply Techniques
 - Bottoms-Up Technique
 - Parametric Technique
 - Specific Analogy Technique
 - Cost Review and Update Technique
 - Trend Analysis Technique

August, 1994 ed



ESTIMATE ADJUSTMENT FACTORS

- Apply/Verify Documented Indirect Factors
- Apply Escalation Indices
- Risk Management
 - Risk Analysis and Assessment
 - Cost Contingency

August, 1984 cd



ESTIMATE DOCUMENTATION

- * Backup Documentation
 - Each major Portion of a cost estimate shall have backup documentation that explains the assumptions and calculations upon which the estimate is based
- * Basis of Estimate (BOE)
 - Work Breakdown Structure
 - Summary Schedule
 - Basis of the Cost Estimate
 - Escalation
 - Summary of Accomplishments
 - Contingency Development
- Estimate Report Format

August, 1984 cd



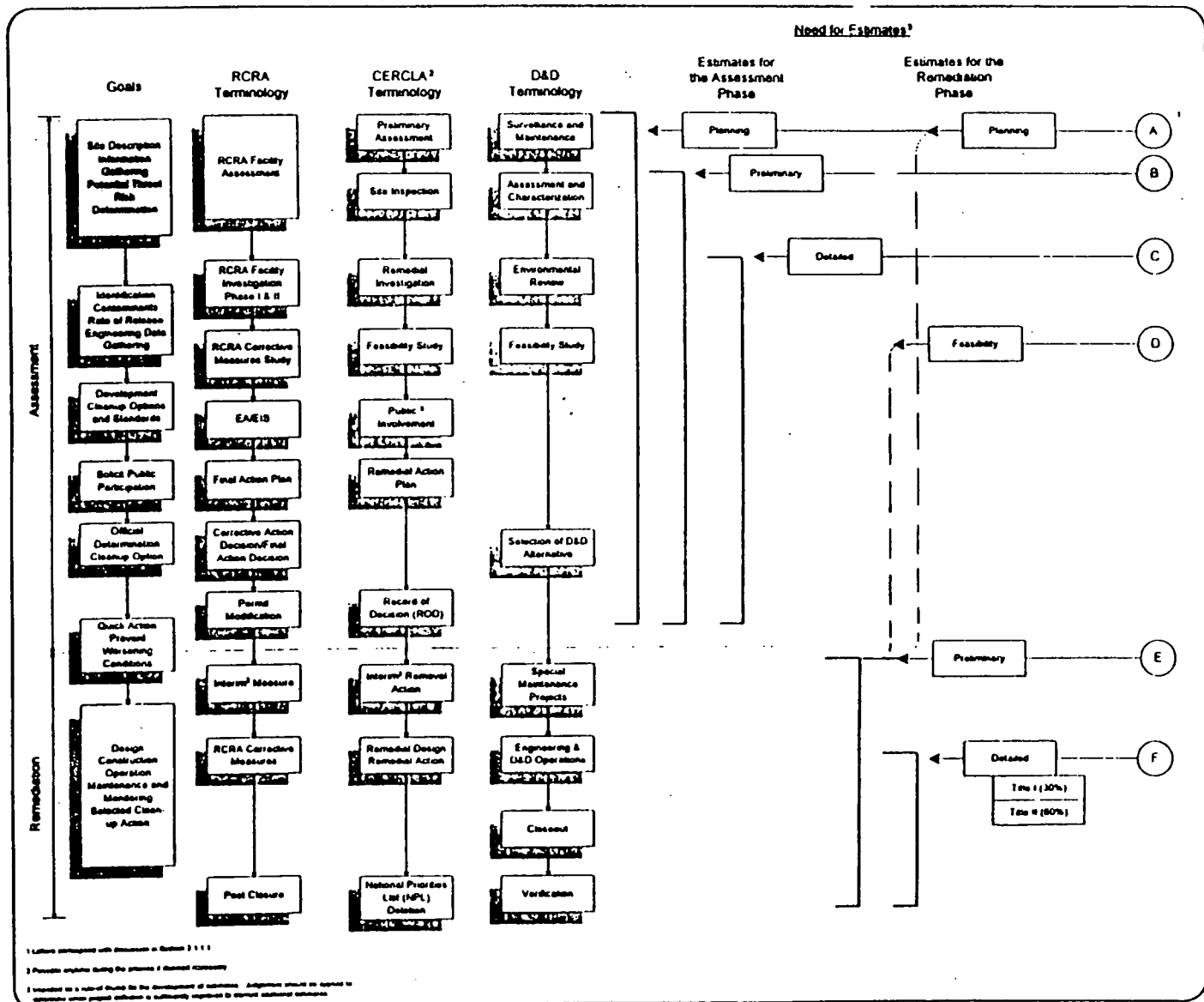


Figure 2-2.
CERCLA/SARA, RCRA and D&D Terminology - Estimates Needed During the Phases of an ER Project

REVISED BUDGET PLANNING AND EXECUTION LANGUAGE
AUGUST 4, 1994

- A. **BUDGET PLANNING** -- DOE shall use its best efforts and take all necessary steps to obtain timely funding to meet its obligations under this Agreement. This shall be accomplished as described in this paragraph and paragraphs _____. It is the intent of the parties that the Environmental Management (EM) actions at the Rocky Flats Environmental Technology Site (RFETS) governed by this Agreement shall consider, but not be strictly driven by the budget targets provided by OMB or DOE-HQ. Specifically, the cost of projects governed by this Agreement, along with the overall constraints of the Federal budget process, timing of financial decisions, and allocation of funds, shall be considered by all parties when establishing the scope and schedule of EM projects. The parties further agree that this process has been developed to impart flexibility in implementing a jointly developed and agreed upon baseline schedule for EM activities at Rocky Flats. In accordance with the provisions of this Part, the parties agree that DOE, in consultation with EPA and CDPHE, will maintain and revise the baselines of site activities; and EPA and CDPHE, in consultation with DOE, will set the enforceable milestones. The time frames and terms specified in these paragraphs are those in use beginning in the fall of 1994. If DOE's budget schedule or process changes, these paragraphs may be modified accordingly.
1. In the process of planning for FY and FY + 1 milestones, the parties shall accomplish the following:
- a. Between July and October of each year, the parties shall evaluate the current schedule, cost and funding status of all projects in progress in the just-ending fiscal year, particularly those activities or projects that are on the critical path to meeting enforceable milestones in FY and FY + 1.
 - b. The process described in (a) shall include [begin with?] consultation among the parties in developing, verifying and reviewing draft work packages for FY. [As it proceeds,?] This process will incorporate the most recent information available concerning project status and Congressional actions on the upcoming FY budget that may affect existing milestones and baselines.
 - a. ~~In preparation for start of the upcoming FY, in July and August of each year prior to the FY (i.e., FY - 1), DOE RFETS shall consult with EPA and CDPHE in developing, verifying, and reviewing draft work packages for the upcoming fiscal year. This process will incorporate the most recent information available on Congressional actions on the upcoming FY budget as it may effect existing milestones and baselines.~~
 - b. ~~In October of each year, using the most up-to-date information available, evaluate the current schedule, cost and funding status of all projects in progress during the prior fiscal year (FY - 1), particularly those activities or projects that are on the critical path to meeting enforceable milestones in FY and FY + 1.~~

August 4, 1994 EPA's Proposal re Stipulated Penalties

Key elements of this proposal:

1. *All Primary Milestones are enforceable.*
2. *All Secondary Milestones are ultimately enforceable if they impact a Primary Milestone.*
3. *Stipulated penalties accrue at time the violation occurs, not when DOE receives notice. (see 1988 Model IAG between EPA and DOE)*
4. *The amount of the penalty assessed is not disputable (see existing IAG).*
5. *Stipulated penalties can accrue to both EPA and the State, independently.*
6. *Primary Milestones carry highest level of stipulated penalties; Secondary Milestone penalties are lower.*
7. *Incorporates DOE's concepts of banking days. (except 1 day credit for every 2 days early, and sets maximum that can be used on any given milestone).*
8. *Allows EPA and State to bank days as well.*

DELAY IN PERFORMANCE/STIPULATED PENALTIES

- A. In the event that DOE fails to meet any primary milestone in accordance with the requirements of this Agreement, EPA and the State each may independently assess a stipulated penalty against DOE, pursuant to their appropriate legal authorities. Penalties may also be assessed if DOE fails to comply with any secondary milestone if such noncompliance impacts DOE's ability to meet a primary milestone. Stipulated penalties will accrue from the date of the missed milestone or the date the non-compliance occurs.
- B. DOE's liability for stipulated penalties to each regulatory agency for missed primary milestones will accrue at a rate of up to \$X,000 per calendar day for the first fifteen (15) calendar days; \$Y,000 per day for the sixteenth through the thirtieth calendar day; and \$Z,000 per calendar day thereafter.
- C. DOE's liability for stipulated penalties to each regulatory agency for missed secondary milestones will accrue at a rate of up to \$X00 per calendar day for the first fifteen (15) calendar days; \$Y00 per day for the sixteenth through the

PART 11 STIPULATED PENALTIES AND CREDITS

- A. In the event that DOE fails to meet an enforceable milestone for a remediation activity, the Responsible Regulatory Agency may, pursuant to the jurisdictional authority set forth in Part I of this Agreement, assess a stipulated penalty against DOE. In the event that DOE fails to meet an enforceable milestone for a remediation impact activity, the Regulatory Agencies may, upon mutual agreement and pursuant to the authority set forth in Part 19 of this Agreement, assess a stipulated penalty against DOE. A stipulated penalty may be assessed in an amount not to exceed [].

Note: Part I describes the jurisdictional authority for remediation activities that are derivative of a statute or a regulation (i.e., RCRA or CERCLA).

Note: Part 19 describes the authority for expanded scope activities which are termed remediation impact activities (e.g., not derivative of a statute or a regulation).

Note: the stipulated amount would be consistent with the model IAG language and our 1994 tolling agreement.

- B. The Responsible Regulatory Agency, with respect to the failure to meet an enforceable milestone for a remediation activity, shall notify DOE in writing that the failure has occurred. If the failure in question is not or has not already been subject to dispute resolution at the time such notice is received, DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution, in accordance with **Part XX** of this Agreement, on the question of whether the failure did, in fact occur. If the failure is determined, through the dispute resolution process, not to have occurred, DOE shall not be liable for the stipulated penalty. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution. In the event DOE does not invoke dispute resolution or if at the completion of the dispute resolution process the failure is determined to have occurred, the Responsible Regulatory Agency shall issue a written notice of violation (NOV) to DOE prior to the assessment of a stipulated penalty associated with the NOV. No stipulated penalty associated with the NOV shall be assessed if the Responsible Regulatory Agency has not notified DOE of its intent to claim a stipulated penalty within ninety (90) days of the date of the NOV.
- C. The Regulatory Agencies, with respect to the failure to meet an enforceable milestone for a remediation impact activity, shall notify DOE in writing that the failure has occurred. If the failure in question is not or has not already been subject to dispute resolution at the time such notice is received, DOE shall have fifteen (15) days after receipt of the notice to invoke dispute resolution, in accordance with **Part XX** of this Agreement, on the question of whether the failure did, in fact occur. If the failure is determined, through the dispute resolution process, not to have occurred, DOE shall not be liable for the stipulated penalty. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution. In the event DOE does not invoke dispute resolution or if at the completion of the dispute resolution process the failure is determined to have occurred, the Regulatory Agencies shall jointly issue a NOV to DOE prior to the assessment of a stipulated penalty associated with the NOV. No stipulated penalty associated with the NOV shall be assessed if the Regulatory Agencies have not jointly notified DOE of the intent to claim a stipulated penalty within ninety (90) days of the date of the NOV.

- D. A system of credits will be established as positive recognition for DOE schedule acceleration achievements. One calendar day of credit will be accrued by DOE for each calendar day that an enforceable milestone is submitted, completed, or accomplished in advance of the scheduled milestone. The Responsible Regulatory Agency's determination that a document or deliverable meets acceptable standards for quality shall be based upon the substantive requirements and the completeness of the document or deliverable. The Responsible Regulatory Agency's assessment that the document or deliverable meets acceptable standards for quality shall be made in good faith. Items such as, but not limited to, methods of accomplishing a task, conclusions and recommendations, or disputed issues shall not be used in assessing the quality of a document or deliverable. For a document or deliverable to be of acceptable quality, it must address the appropriate topics, provide sufficient detail to perform a technical review, and be presented in the proper format (if the Responsible Regulatory Agency requests a specific format be followed).
- E. For each calendar day the Responsible Regulatory Agency exceeds the review time periods established in **Part XX** (Submission and Review of Documents), DOE shall accrue one calendar day credit as described above in Paragraph D. For each calendar day the Responsible Regulatory Agency uses less time than the review time established in **Part XX**, a calendar day credit may, at the Responsible Regulatory Agency discretion, be deducted from DOE's accrual of calendar day credits. Such deductions, however, shall not be made if to do so would place DOE in a position of a credit deficit or negative balance..
- F. A one calendar day extension may be applied by DOE, subject to consultation with the Responsible Regulatory Agency, to any enforceable milestone for each day of credit. Credits accumulated in connection with an enforceable milestone for a remediation activity may be applied only towards milestones enforceable by the Responsible Regulatory Agency to which the credit was gained. Credits accumulated in connection with an enforceable milestone for a remediation impact activity may be applied by DOE to any enforceable milestone. The application of credits to any particular enforceable milestone may be done no more than two times during a given fiscal year. The Responsible Regulatory Agency and DOE may, with mutual agreement, increase these amounts for credits accumulated in connection with an enforceable milestone for a remediation activity. The Regulatory Agencies and DOE may also agree to increase these amounts for credits accumulated in connection with an enforceable milestone for a remediation impact activity.